

COMPREHENSIVE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SUNNYVALE
AND THE
COMMUNICATION OFFICERS ASSOCIATION
1999-2004

Extended per RTC 06-014

PREAMBLE

This Memorandum of Understanding (MOU) is between the City of Sunnyvale (City) and the duly authorized representatives of the Communication Officers Association (COA). Its purpose is to promote harmonious relations between the City, the Association, and employees by setting forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding the wages, hours, and certain other terms and conditions of employment of employees in the classifications comprising this unit.

Article 1 - Recognition

- 1.1 The Communication Officers Association is recognized as the exclusive representative of employees in the Department of Public Safety's Communications (Dispatch) Unit. Represented classifications include, but are not limited to: Senior Public Safety Dispatcher, Public Safety Dispatcher, and Public Safety Dispatcher-in-Training.
- 1.2 Additional classifications, as deemed appropriate and as mutually agreed upon by the parties to be placed in this Unit, shall be included upon such determination.

Article 2 - Scope of Representation

- 2.1 The scope of representation of the Recognized Employee Organization shall be wages, hours and other terms and conditions of employment, subject to the provisions of this MOU.

Article 3 - Ratification

- 3.1 It is agreed that the provisions of this MOU are of no force or effect until ratified by the Association and duly adopted by the City Council of the City of Sunnyvale.

Article 4 - Term

- 4.1 The term of this agreement shall be from July 1, 1999 through and including December 31, 2004, and will thereafter continue in effect until the parties reach agreement on a successor agreement or the City Council takes action to modify the benefits provided by hereunder, except as provided in Article 17.6 and 25.1.1.

Article 5 - City Rights

- 5.1 It is understood and agreed that the City retains all of its powers, rights, authority, duties and responsibility conferred upon and vested in it by the Laws and Constitution of the State of California, the City Charter, and the City Municipal Code, except as specifically limited, abridged or relinquished by the terms of this MOU.

Article 6 - Ordinances, Codes, Resolutions

- 6.1 This MOU complies with the provisions of City's Employer-Employee Relations Code, Chapter 2.24 in that the Employer-Employee Representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

Article 7 - Full Understanding, Modifications, and Waivers

- 7.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.
- 7.2 It is agreed and understood that, except as set forth herein, each party hereto voluntarily and unqualifiedly waives its right to negotiate, and agrees that the other party shall not be required to negotiate, with respect to any matter covered herein.

City agrees to notify the COA in writing of any proposal to change wages, hours, or terms and conditions of employment not specifically covered by this Agreement and to meet and confer in good faith with COA prior to adopting such proposal. Existing benefits which could be considered part of a "total and quantifiable compensation package" (i.e. monetary benefit to one or more employees, such as leaves) may not be changed without mutual agreement. In all other matters, the parties agree that in the event the parties are unable to reach agreement, the Impasse Procedures set forth in Section 2.24.260 of Chapter 2.24 of the Sunnyvale Municipal Code (Employer-Employee Relations Code) and of City's Administrative Policy

Manual shall not be utilized. Once impasse is reached, the City may exercise its rights pursuant to the Meyers-Millias-Brown Act.

City shall amend its Employer-Employee Relations Code and Administrative Policy Manual to reflect the terms and conditions of this paragraph.

- 7.3 No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed in writing by all parties hereto, and if required, approved by the City and ratified by the membership of the Association.
- 7.4 The waiver of any breach, of any term, or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

Article 8 - Severability

- 8.1 In the event that any provision of this MOU is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall remain in full force and effect.
- 8.2 If a provision is declared invalid or unenforceable as provided in Section 8.1 above, then at the written request of either party submitted to the other within fifteen (15) calendar days of such action by the court, the parties shall promptly meet to determine the impact of such.

Article 9 - Conclusiveness

- 9.1 With this MOU, the City has met its obligations to meet and confer in good faith as provided by law for the term hereof; except, however, any changes proposed by the City in the working conditions that fall within the scope of meeting and conferring pursuant to the Myers-Millias-Brown Act (MMB) and this MOU, and that affect employees will be submitted to the COA, thirty days in advance of such proposed action, except in case of emergency as provided by the MMB Act for the purpose of meeting and conferring regarding such proposed changes.

Article 10 - Renegotiations

- 10.1 In the event either party hereto desires to negotiate a successor Memorandum of Understanding, such party shall serve upon the other during the period of 120 days and 90 days prior to the termination date of the MOU, its written request to commence negotiations as well as its initial written proposal to modify the current MOU.

Upon receipt of such written notice and proposals, negotiations shall begin no later than 60 days prior to the termination date of the MOU.

Article 11 - Concerted Activities

- 11.1 Employees will not strike, withhold services, engage in "slow-downs" or "sick-ins" or participate in any form of concerted activity which is intended to or does adversely affect job performance or rendering of City services.

Article 12 - Definitions

- 12.1 For purposes of this MOU, "payroll year" is defined as beginning on the first day of the last pay period starting in December and ending on the last day of the last full pay period in the following December.

Article 13 – Civil Service Rules and Regulations

- 13.1 This Agreement adopts by reference the provisions of the Civil Service Rules and Regulations and the existing Salary Resolution insofar as these provisions apply to wages and fringe benefits and such provisions remain in effect except as modified herein.

Article 14 - Non-Discrimination

The parties agree that they and each of them shall not discriminate against any employee or Organization member on account of race, religious creed, color, national origin, ancestry, gender, sexual orientation, age, physical or mental disability, medical condition, or marital status.

- 14.1 Any employee seeking to utilize the grievance procedure, claiming a violation of this sub-paragraph, shall make an election of remedies between the grievance procedure and any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. No employee shall be allowed to pursue the grievance procedure claiming a violation of this subparagraph if that employee cites the same underlying facts in pursuing any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964 and if no adverse finding has been rendered in pursuit of

such other remedy. When an employee seeks to use the grievance procedure claiming a violation of this subparagraph, the City, the Organization, and the employee shall enter into a complete settlement agreement which provides that in exchange for the agreement to voluntarily settle the dispute through the grievance procedure, the employee agrees to waive his/her right to pursue any other remedy otherwise available through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. Such settlement agreement shall contain a provision that the employee has been advised of his/her right to consult an attorney and/or a local, State or Federal anti-discrimination agency regarding his/her discrimination claim and that his/her consent to the settlement agreement is voluntary and knowing.

- 14.2 The parties agree that they and each of them shall not discriminate against any employee because of membership or non-membership in the Communication Officers Association (COA), or because of any authorized activity on behalf of the COA, or because of the exercise of rights under this agreement.

Article 15 - Equal Employment Opportunity

- 15.1 The Sunnyvale Communication Officers Association supports in full the City's Equal Employment Opportunity Program.

Article 16 - Authorized Agents

For purposes of administering the terms and provisions of this MOU:

- 16.1 City's principal authorized representative shall be the City's Director of Human Resources or his/her duly authorized representative (street address: 505 W. Olive Avenue, Suite 200, Sunnyvale, CA 94086; mailing address P.O. Box 3707, Sunnyvale, CA 94088-3707; telephone (408) 730-7495), except where a particular management representative is specifically designated in connection with the performance of a specified function or obligation set forth herein.
- 16.2 The Association's principal authorized agent shall be the President of the Communication Officer's Association or his/her duly authorized representative. The Association's official mailing address is: P.O. Box 60372, Sunnyvale, CA 94088.

Article 17 - Wages

- 17.1 Steps 1 through 4 for Public Safety Dispatcher shall be set so that Step 2 is 5% more than Step 1; Step 3 is 5% more than Step 2; Step 4 is 5% more than Step 3; and Step 5 is 5% more than Step 4.
- 17.2 The salary for Step 5 of Senior Dispatcher shall be 10% more than Step 5 of Public Safety Dispatcher.
- 17.2.1 Effective July 11, 1999, the differential shall be 14.5%.
- 17.3 Step 5 of Public Safety Dispatcher shall be 15% less than Step 5 of Public Safety Officer II.
- 17.4 Public Safety Dispatcher salaries shall be adjusted at the same time that Public Safety Officer salaries are adjusted.
- 17.5 Recognizing that the PSOA total compensation formula includes the shared cost of the EPMC for PSOA, the resulting percentage increase, if any, based on the aforementioned differential with the Public Safety Officer II will be further adjusted as indicated below to reflect the differential in the cost of the EPMC for COA:
- 17.5.1 If the PSOA total compensation formula produces no increase during any given survey period, no adjustment for COA employees will occur.
- 17.5.2 Notwithstanding Section 17.5.1, effective on the dates listed below, the resulting salaries will be increased by the indicated differentials.

	PSOA EPMC Cost	COA EPMC Cost	Differential
July 1999	3.14%	1.861%	1.279%
February 2000	2.68%	1.861%	0.819%
July 2000	2.68%	1.504%	1.176%
February 2001	2.22%	1.504%	0.716%
July 2001	2.22%	1.147%	1.073%
February 2002	1.77%	1.147%	0.623%
July 2002	1.77%	0.791%	0.979%
February 2003	1.77%	0.791%	0.979%
July 2003	1.77%	0.739%	1.031%

17.5.3 As an exception to the adjustments indicated in the table above, if at any time the City's PERS Miscellaneous employer rate reaches seven percent (7%) or greater, no additional increase shall be added to the calculated salary increase as determined from the PSOA total compensation formula results.

17.6 In the event a successor agreement is not reached by December 31, 2004, the following February 2005 increase, if any, as a result of the tie to PSOA, will be implemented. Retroactivity of additional formula increases after February 2005 shall be subject to negotiations.

Article 18 - In-Lieu Holiday Pay

18.1 Employees shall be entitled to in-lieu holiday pay equivalent to 88 hours per year, paid at 3.39 hours per pay period.

Article 19 – Out-of-Class Premium

19.1 Employees who are assigned to work in a higher classification and work in such classification for a minimum of one (1) shift shall be compensated at five percent (5%) above the employee's normal pay or the first step of the higher level position, whichever is greater. Compensation shall be based on the actual hours worked during the out-of-class assignment.

Article 20 - Translator/Bilingual Pay

20.1 Employees shall be entitled to receive, in addition to their regular compensation, the additional payment outlined below for Translator/Bilingual skills, if they meet the following criteria:

20.1.1 Certification from the City that the employee possess the needed language skills, and

20.1.2 Certification by the director of the department that a particular assignment involves need for the required skills on a regular basis.

20.2 Qualifying languages are: Chinese, Japanese, Portuguese, Sign Language, Spanish, Tagalog (Filipino), Thai, Vietnamese, Farsi, and other language(s) deemed appropriate by the City.

20.3 The certifications required and obtained above will not necessarily follow an employee if transferred or promoted.

20.4 Effective the first full pay period following ratification of this MOU by the COA membership and approval by the City Council, payment shall be:

20.4.1 Twenty-five (\$25.00) per month/eleven dollars and fifty-four cents (\$11.54) per pay period for Level 3-6 proficiency or Sign Language “communicator” level skills; or

20.4.2 Fifty dollars (\$50.00) per month/twenty-three dollars and eight cents (\$23.08) per pay period for Level 7 or higher proficiency.

Article 21 - Trainer Compensation

21.1 Effective the first full pay period following ratification of this MOU by the COA membership and approval by the City Council, an employee in the classification of Public Safety Dispatcher who is assigned as a Trainer (CTO) shall be compensated at five percent (5%) above the employee’s normal base pay. Compensation shall be based on actual hours worked during the assignment.

21.2 Qualifications and Training

21.2.1 To become a Trainer (CTO), an employee shall have:

- i. a minimum of two years experience in the dispatching field;
- ii. an overall “competent” rating for the two most recent audits/evaluations;
- iii. successfully completed the probationary period.

21.2.2 The employee shall fill out a written application or letter of interest.

21.2.3 The City shall ensure that newly appointed Trainers (CTOs) will go to a POST-certified course within a year of appointment as a Trainer (CTO).

Article 22 - Call-Back Pay

22.1 An employee who has completed his or her work day and has left his or her work site and is ordered to return to duty following the employee’s normal work day shall receive pay for actual work performed or a minimum payment of two (2) hours at the overtime rate if each of the following conditions is met:

22.1.1 The order to return to work occurs following the termination of his or her work shift on the day the return is required,

22.1.2 The return is necessitated by unanticipated work requirements, and

22.1.3 The employee actually returns to work.

- 22.2 An employee who receives a "call back minimum" and who leaves work, shall not receive another "call back minimum" if he/she is called back to work within two (2) hours of the previous call back.
- 22.3 An employee who is ordered to begin his or her shift up to two (2) hours prior to his or her normal starting time shall not be eligible to call back pay for that early call back.

Article 23 - Retirement

- 23.1 The City agrees to continue the current "payment" plan whereby the City makes a contribution to PERS on behalf of the employee.
- 23.2 The City shall contribute seven percent (7%) of salary for the employees' "normal" contribution, and one percent (1%) to fund the cost of the "single highest year" retirement benefit.
- 23.3 The City's payment of employees' PERS contribution is based upon authority from PERS and upon tax treatment permitted by the Internal Revenue Service under Internal Revenue Code Section 414(h)(2) and revenue rulings related thereto, and by the California Franchise Tax Board. It is understood that the State Legislature or Congress may alter the statutory authority for this tax treatment, and the Franchise Tax Board, or the IRS or the United States Department of Treasury may alter the current revenue rulings, either by other rulings or regulations.
- 23.4 In the event that the City's payment of employees' PERS contribution is no longer authorized by law, the City has the right to discontinue it, in which the obligation to pay would fall upon the employee.

The City and COA further agree to meet and confer regarding the impact of such a change. At that point, there would be an adjustment to the salary formula.

- 23.5 The City shall adopt the necessary resolutions and obtain written confirmation of compliance from PERS to report the value of employer paid member contributions (EPMC) of seven percent (7%) as additional compensation for each Unit member in the City effective retroactive to July 11, 1999.
- 23.6 The City has contracted with PERS to provide for miscellaneous employees, including employees in this Unit, the retirement formula commonly called "Local Miscellaneous 2% @ 55".

In addition, the City has contracted with PERS to provide Level III of the 1959 Survivor Benefit which is applicable to employees in this Unit.

- 23.7 The City shall amend its contract with PERS to provide the Military Buy-Back Option for employees in this Unit at such time this benefit is implemented for PERS miscellaneous employees.

Article 24 - Federal Mandates/Social Security

- 24.1 If the Federal Government passes legislation or a court of competent jurisdiction makes a ruling that makes Social Security applicable to the employees within the Unit, then the parties agree to meet promptly at the request of either party to negotiate the impact of such law or ruling.
- 24.2 It is the intent of the parties to minimize the fiscal impact of such law or ruling upon each of the parties. If possible, there shall be no increased cost to either party while maintaining benefits as close to existing levels as possible.
- 24.3 If the parties have not reached agreement within 30 days the request to negotiate, the matter shall be submitted to the City's impasse procedure.

Article 25 - Insurance Programs

25.1 General

The City shall continue to provide group medical, vision, and employee assistance insurance plans.

Employees shall receive City contributions applied as provided in the City's Salary Resolution in the same amounts and at the same times that employees represented by the Public Safety Officers Association (PSOA) receive City contributions for similar insurances. The amount the City contributes for PSOA, for medical, vision, employee assistance program, and optional life insurance, shall be applied to medical insurance, vision insurance, the employee assistance program, and optional life insurance for COA.

- 25.1.1 In the event a successor agreement is not reached by December 31, 2004, an increase, if any, in contribution amount occurring prior to February 2005, as a result of the tie to PSOA, will be implemented. Retroactivity of contribution amount increases, if any, after February 2005, shall be subject to negotiations.

25.2 Dental Insurance

25.2.1 Dental Insurance will continue to be provided by the Association.

25.2.2 The Association shall contract with a dental provider and make dental insurance available to all represented employees.

25.2.3 Employees shall not be eligible for dental insurance under the MOU until they have thirteen (13) pay periods of continuous service with the City.

25.2.4 The Association shall submit a detailed invoice including the name of employees and type of coverage to the City and the City shall pay the dental insurance premium for each employee by remitting such premiums to the Association.

25.2.5 The City shall contribute up to the same maximum amount as provided for PSOA.

25.3 Employee Assistance

Benefits will be the same as those provided for other represented employees who participate in the Employee Assistance Program.

25.4 Vision Care

Coverage in the City's current Vision Care Program became effective for employees in August 1988. Enrollment in this program is mandatory, and benefits will be the same as those provided for other employee groups who participate in the Vision Care Program.

25.5 Life Insurance:

The City shall provide basic Life and Accidental Death and Dismemberment Insurance for each employee in an amount equal to that employee's base annual salary rounded to the nearest thousand.

Such insurance shall be at no cost to the employee, except that insurance amounts above \$50,000.00 provided by the City shall be subject to tax law provisions.

At the time of hire, an employee may purchase optional insurance in an amount equal to the coverage provided by the City and at the same rate the City pays. Current employees may purchase optional insurance as provided above, subject to approval by the carrier.

25.6 Long Term Disability (Income Protection):

Upon expiration of the Disability Benefits, an employee is eligible to apply for long-term disability benefits which provides for 2/3 of pre-disability earnings to a maximum of \$7,500 per month. The premiums for such LTD insurance shall be paid by the City.

Article 26 – Premium Conversion

- 26.1 The City agrees to provide employees with an option to pay their insurance premium contributions on a pre-tax basis, as provided in the Internal Revenue Code.

Article 27 - Cash In-Lieu of Medical Coverage

- 27.1 Effective with the plan year beginning January 2000, the City will provide employees with the option of reducing their medical coverage and receiving payment of a portion of what otherwise would be the City contribution.

To be eligible for this plan, an employee must either:

1. Change from full family coverage to employee plus one or employee only coverage;
2. Change from employee plus one coverage to employee only coverage;
3. Change from any level coverage to no coverage; or
4. Be a new employee choosing no coverage.

Payment shall be made on the following schedule:

<u>Current</u>	<u>New</u>	<u>Monthly</u>
E + 2(+)	0	\$125.00
E + 2(+)	E	\$ 75.00
E + 2(+)	E1	\$ 20.00
E + 1	0	\$100.00
E + 1	E	\$ 35.00
E	0	\$ 50.00
new	0	\$ 50.00

Whenever an employee changes to no coverage, the employee shall provide proof of alternate coverage and sign a waiver that he/she does have alternative coverage and that he/she understands that he/she will no longer receive coverage through a City sponsored PERS provided medical plan.

If an employee decides to increase his/her level of coverage either by

reentering a City sponsored PERS provided medical plan or including a dependent in his/her current coverage, he/she must submit a health statement for the provider's approval or enroll during the annual open enrollment period.

Responsible procedures for exercising this option and for reentering City sponsored PERS provided medical plans shall be established by the City.

Article 28 – Dependent Care

- 28.1 The City shall continue to provide a plan in accordance with Internal Revenue Code Section 129 allowing employees to qualify for pre-tax dependent care savings.

Article 29 - Vacation

- 29.1 Effective July 1, 1999, vacation shall be accrued as follows:

3.4 hours per pay period for employees with 130 or fewer pay periods of continuous service (0 - 5 years).

5.0 hours per pay period for employees with 131-260 pay periods (5 - 10 years) of continuous service.

6.5 hours per pay period for employees with 261-520 pay periods (10 - 20 years) of continuous service.

7.0 hours per pay period for employees with 521-650 pay periods (20 - 25 years) of continuous service.

8.0 hours per pay period for employees with 651 or more pay periods (25+ years) of service.

- 29.2 Maximum Accumulation

Employees may accumulate vacation leave up to 400 hours.

- 29.3 Vacation Use

Employees are encouraged to schedule and use a minimum of 40 hours of vacation leave per year.

29.4 Exceeding Cap Due to Work Requirements

In the event the City requires any employee to work at a time which results in that employee's vacation accrual to exceed the maximum permitted (400 hours), then such employee shall be paid for such excess vacation hours, rather than lose them or be forced to take vacation.

29.5 Vacation Accrual Pro-ratio on Authorized Leave Without Pay

Vacation accrual will be prorated on the ratio of authorized leave without pay to 80 hours to the nearest one-tenth of an hour as shown in the following example:

Assume 8 hours of authorized leave without pay is taken in an 80 hour pay period.

$72 \text{ work hours} / 80 \text{ pay period hours} =$
 $90\% \times 8.0 \text{ (maximum vacation accumulation)} =$
7.2 hours

Employees on leave without pay status as a result of tardiness will continue to accrue vacation leave at the usual rate provided the tardiness does not exceed 1 hour.

29.6 Vacation Leave Special Use

Each payroll year, employees may elect to use up to a maximum of ten (10) hours of their vacation leave time pursuant to the rules governing the use of floating holiday time.

29.7 Prime Time and Seniority defined

Prime Time shall be defined as the periods between the following inclusive dates:

June 1 through September 15
December 20 through January 5
The week before and after Easter

For the purposes of administering the provisions of Section 29.8 and 29.9, Seniority shall be calculated on the basis of total continuous City service in COA represented classifications.

29.8 Vacation Lists and Scheduling During Prime Time Periods

Separate vacation lists for use during the Prime Time periods described in Section 29.7 shall be established on the basis of seniority for employees in the classifications of Public Safety Dispatcher and Senior Public Safety Dispatcher. Such lists shall be used for the exclusive purpose of determining seniority for vacation scheduling during Prime Time periods and shall not, in any way, be used to determine vacation eligibility or seniority for dates outside of that period. It is understood and agreed by the parties that not more than one employee in the same classification can be on vacation during a "Prime Time" period.

29.9 Vacation List and Scheduling During Non-Prime Time Periods

In addition to the two lists described in Section 29.8, a single and separate seniority list containing the names of both Public Safety Dispatchers and Senior Public Safety Dispatchers shall be established for the purpose of scheduling vacation days other than the Prime Time days described in Section 29.7. It is understood and agreed by the parties that not more than one employee in the same classification can be on vacation during a Non-Prime Time period.

Article 30 - Floating Holidays

- 30.1 Employees shall be entitled to 20 hours of floating holiday leave during each payroll year.
- 30.2 Newly hired employees will be credited with a pro-rata share of the floating holiday hours.
- 30.3 Employees leaving during a payroll year will have floating holiday hours prorated on their final paycheck.
- 30.4 An employee having unused floating holiday hours at the end of the payroll calendar year has the option of having all of the unused hours paid in cash or added to his/her vacation balance provided such addition of hours does not cause the employee's vacation leave balance to exceed the maximum accrual allowed (see Article 29.2).
- 30.5 Floating holiday leave may be granted with the approval of the appropriate supervisor or designee.

Article 31 - Bereavement Leave

- 31.1 An employee who has completed thirteen (13) pay periods of service shall be entitled to bereavement leave in an amount not to exceed forty (40) work hours where death has occurred to a person on the list below.
- 31.2 To qualify for bereavement leave the death must occur to an employee's spouse, or to the employee's or the spouse's father, mother, son, daughter, brother, sister, grandparent, or grandchild.

Article 32 - Emergency Family Leave

- 32.1 Employees are entitled to emergency family leave not to exceed eight (8) work hours during a standard work day subject to the following conditions:
 - 32.1.1 Emergency family leave may be authorized for sudden illness or disability of spouse or child requiring immediate attention at home, the doctor's office or at the hospital.
 - 32.1.2 Emergency family leave shall not be authorized for:
 - disability beyond the emergency;
 - routine illness or disability (colds, headache, etc.);
 - family medical appointments for continuing illness or disability, if for routine care;
 - emergency care of family other than spouse or child;
 - attendance at hospital with spouse or child for scheduled surgery or routine hospitalization;
 - scheduled delivery of spouse or child to hospital; or
 - child care during spouse's scheduled medical visits.

Article 33 – Medical Appointment Leave

- 33.1 Medical appointment leave for appointments with medical doctors and dentists may be authorized after the employee has completed twenty-six (26) consecutive pay periods of service. This leave will not exceed two (2) hours during a standard daily work schedule.
- 33.2 Employees should take all due care to reduce the impact of medical appointment leave on their work schedule. Employees should make every reasonable effort to schedule medical, dental, and related appointments on their off duty time. If this is not possible, employees should attempt to schedule appointments as close to the beginning or ending of that shift as possible.

Article 34 - Disability Leave

- 34.1 After completion of twenty-six (26) consecutive pay periods of service, the City shall provide regular salary for disability leave, less any coverage provided by any other insurance program, for the first ninety (90) calendar days of each and every disability. The specific application of this program is governed by the applicable provisions of the City's Personnel Policies and Salary Resolution.
- 34.2 Employees shall have forty (40) hours of combined disability leave and Workers' Compensation leave available for use as needed in the first year of employment. The specific application of this program is governed by the applicable provisions of the City's Personnel Policies and Salary Resolution.
 - 34.2.1 An employee with less than twenty-six (26) pay periods of service who has exhausted his/her paid leaves, in the event of a medical disability, may access the Emergency Relief Fund.

Article 35 - Disability Leave Incentive Pay

- 35.1 Each January during the term of this MOU, the City will share disability leave savings based on disability leave usage during the payroll calendar year which was just completed with employees who were employed the previous full payroll calendar year as outlined below.
- 35.2 The procedure for determining the disability leave savings will be calculated and paid according to the following procedure:

Individual leave records for combined work related and non-work related disability during the payroll calendar year just completed shall be determined for each active individual Dispatcher, and the average for the payroll calendar year will be calculated based on the number of full time equivalent (FTE) employees in this category. The number of FTE Dispatchers will be calculated on all paid hours for the year, except for overtime and in-lieu of holiday leave, and dividing by 2080 hours.

If the payroll calendar year average is less than the previous payroll calendar year's use, the amount of shared savings to be distributed will be calculated by taking the difference between the averages, multiplying by the number of FTE employees in these categories, and dividing by 2. The result will be the number of hours to be paid on a pro-rata basis to those employees who have used less than the average number of leave hours. The pro-rata share will be determined by the number of hours under the average that were used by the individual in relationship to the total number of hours under the average these employees used as whole.

Payment will be made in the month of January and will be based on the average hourly rate, excluding overtime pay, for the payroll calendar year just completed.

- 35.3 The City and COA agree to re-open this Article of the MOU, and Article 34, if applicable, at such time as the Sunnyvale Employees Association (SEA) and the City reach agreement on a new disability program and/or disability leave incentive program for SEA members.

Assuming acceptability, both parties agree to implement the disability/disability leave incentive program developed by the SEA/City task force while working together to address concerns raised by the City and COA during the meet and confer sessions.

Article 36 - Compensatory Time Off

- 36.1 During each year, management may authorize up to 160 hours of compensatory time off (CTO) as payment for overtime worked, in lieu of overtime pay.
- 36.2 CTO shall be paid at the rate of one and one-half (1 1/2) times the overtime hours worked.
- 36.3 Time charged to compensatory time may not be changed to overtime and must be used by the end of the first full pay period in January.
- 36.4 At the end of the second pay period ending in January, unused compensatory time shall be paid at the employee's rate of pay on the check issued in that pay period.
- 36.5 Time off will be approved based upon the same relief policies governing vacation leave for any schedule in effect throughout the term of this MOU. Compensatory time may be used in conjunction with or in place of approved vacation.
- 36.6 In the event that overtime becomes necessary to cover approved compensatory time off, the employee providing this relief must receive overtime pay for the relief time worked.

Article 37 - Shift Selection

- 37.1 Shift assignments will be bid on the basis of seniority for regular employees with the current overall "Competent" achievement rating.
- 37.2 Selection of shift assignments will occur annually, normally during the month of January. If a vacancy occurs during the year, at management's discretion or at the request of COA, the vacated shift may be put up for bid.
- 37.3 Management will assign shifts, taking into consideration bid preference by employees, length of service, balance of staffing, and other operational requirements.

Article 38 - Days Off Rotation

- 38.1 For employees on a regular 5/8 schedule, regular days off will be rotated sequentially for each shift every four (4) months among the available shifts within that watch, to the nearest pay period according to the schedule in effect.
- 38.2 Days Off Rotation for any other schedule other than a regular 5/8 will occur as specified in the special schedule agreement.

Article 39 - Shift Substitutes

- 39.1 Dispatchers and Senior Dispatchers shall be entitled to substitute ten (10) tours of duty exclusive of substitutions for educational or civic activities among each other by mutual agreement subject to these conditions:
 - 39.1.1 Request must be submitted by the parties to the substitution indicating the shift or tour of duty for which the substitution is to take place with written statement signed by both parties that the City will not be held liable for any overtime involved in the fulfillment of the agreement by either party to the agreement to satisfy the conditions agreed to, nor that the City will be held liable for any incidents occurring to the party off the job as a result of the shift or tour of duty.
 - 39.1.2 The substitution must be approved in advance by the communications manager or designee.
 - 39.1.3 The person initiating the trade is to be charged.
 - 39.1.4 The trade and its repayment will not be subject to overtime provisions.

- 39.1.5 Shift substitutions for education will be limited to eight hours per shift.
- 39.1.6 No shift substitutions nor paybacks will be approved for scheduled training days or special training days scheduled at the beginning of the schedule year by the training division except under extenuating circumstances and approved by the Division Commander.
- 39.1.7 Shift trade paybacks will be allowed only on regular days off.
- 39.1.8 Shift substitutions shall be approved only for employees whose overall rating on the most recent achievement audit was at least competent.
- 39.1.9 Every instance of shift substitution for personal reasons shall be counted as one shift trade regardless of whether it is a full shift or a portion of a shift.
- 39.2 Definitions of "Civic Activities" for purposes of Substitution of Shifts:
 - Active participant in an event as a member or officer of:
 - Department or City-sponsored project;
 - Civic or service-oriented clubs (Lions, Rotary, Kiwanas, etc.);
 - School District sponsored Parent Teacher Association (PTA);
 - Coach or team assistant of children's athletic teams;
 - COA athletic leagues; or
 - COA business functions.
- 39.3 Definition of "Educational Activities" for purposes of substitution of shifts:
 - Those educational courses which would ordinarily qualify for reimbursement by the City or be otherwise directly related to Public Safety employment.

Article 40 - Special Schedules

- 40.1 The City and COA may agree to special schedules.
- 40.2 As to any change in work schedules agreed upon between the City and the COA, the COA will carry out its duty of Fair Representation to each member of the bargaining unit.

Article 41 - Direct Deposit

- 41.1 An employee may directly deposit all or a portion of his or her net salary to a bank of his or her choice via direct electronic paycheck deposit.
- 41.2 Each employee desiring this alternative must deliver a signed authorization to the Department of Human Resources requesting such electronic deposit. As part of the authorization requesting electronic deposit, each employee shall also supply the City with information required by the City to process the request.

Along with the authorization requesting electronic deposit, the employee must also file a waiver prepared by the City stating that the employee knows the City can not control and is not responsible for, the day upon which the employee's bank credits his or her account with the deposited funds.
- 41.3 The specific procedures for implementing direct deposit shall be as developed and implemented by the City.

Article 42 - Testing for City Vacancies

- 42.1 Any employee represented by COA who desires to test for a position advertised and posted by the City, if such a position represents a promotion or lateral transfer, shall be entitled to time off without loss of pay for the period required to take any and all parts for the testing process. Each employee is allowed to exercise this prerogative twice per year.
- 42.2 The Department shall have the ability to interview and to appoint from among all of the applicants on the Eligible List. In this regard, the following provisions will apply:
 - 42.2.1 The Department may interview as many or as few people as it desires, subject to the provisions of 42.2.2. below.
 - 42.2.2 Regardless of how many people the Department desires to interview per 42.2.1 above, it must include in its interview process the top three COA-represented employees on the Eligible List.
 - 42.2.3 The parties affirm and accept the City Charter merit system principle.

Article 43 - Hearing Examination

- 43.1 Annually, each employee will be provided the opportunity to receive a diagnostic hearing examination provided by the City. If, in the opinion of the examining physician, a more comprehensive examination is needed, the opportunity for such examination will be provided.

Article 44 – New Employee Orientation

- 44.1 The Association may prepare a new employee information packet which shall be given by the City to appropriate employees during the Department of Human Resources orientation of new employees.

Article 45 - Labor-Management Committee

- 45.1 The parties shall continue the joint Labor-Management Committee. Each side shall have two representatives on the Committee, plus additional people as reasonably needed for a specific topic. The Committee shall meet once monthly, unless mutually agreed otherwise.
- 45.2 The parties agree that this Committee is formed to resolve labor-management issues in a way that maximizes the chances of mutual agreement. The purpose of the meetings is to exchange information and to identify and work to resolve potential problems or issues as they arise.
- 45.3 Recommendations of a majority of the Committee shall be routed through the Operations Manager/Communications to the Director of the Public Safety Department. The parties agree that such meetings shall not be negotiations. Therefore, the results of the meetings shall not be binding on the parties unless they develop and execute a document that memorializes their results and that is ratified by COA and the appropriate City representatives.
- 45.4 The Committee shall be charged with the following:
 - 45.4.1 Explore the feasibility of Job Share opportunities
 - 45.4.2 Explore the feasibility of an Alternative Work Schedule.
Note (7/27/99): this is not meant to interfere with the parties' ongoing discussion of a 4/11 schedule.

Article 46 - Selection Appeal Procedure for Promotional Opportunities

- 46.1 Job applicants may file an appeal for the selection process based only on one of the following:
 - 46.1.1 The employee's completed application form is in dispute;
 - 46.1.2 Assertions that the employee's experience, training, education, etc., as detailed on the employee's application, meets the qualifications as advertised in the job announcement;
 - 46.1.3 Assertions that the City's selection procedure was not followed;
 - 46.1.4 Assertions that the employee has been discriminated against on the basis of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical conditions, marital status, or Association membership in any aspect of selection.
- 46.2 In such cases, the employee shall file a written statement specifying the dispute and requesting a review before the Director of Human Resources.
- 46.3 Such statement must be submitted within seven (7) calendar days after the applicant knew or should have known of the problem prompting the appeal pursuant to Article 46.1, above.
- 46.4 A review before the Director of Human Resources or designee shall be set for a time that is within seven (7) calendar days of receipt of the appeal.
- 46.5 A fair and impartial review shall be held with the Director of Human Resources or designee to consider the facts and circumstances of the appeal. Applicant may submit any pertinent materials. If the appeal relates to an oral interview in which the Director of Human Resources participated, the appeal will go directly to the Assistant City Manager for the final determination (see 46.8 below).
- 46.6 The Director of Human Resources or designee will provide a written response to applicant within seven (7) calendar days.
- 46.7 Should applicant still be dissatisfied with the response, he/she may request within seven (7) calendar days a further review before the Assistant City Manager or a designee who is at least at the Department Director level.
- 46.8 Assistant City Manager or designee shall hold a review within seven (7) calendar days from the date of the appeal to further consider the facts and circumstances of the appeal. Assistant City Manager or designee shall make a final decision and notify applicant within fourteen (14) calendar days of the

appeal.

Article 47 - Grievance/MOU Interpretation Impasse Procedure

PREAMBLE

The parties agree that this grievance procedure is designed to resolve labor management issues in a way that maximizes the chances of mutual agreement. The communications/appeals process described below should also maximize harmonious, respectful, and polite communications, whether up or down the chain of command.

DEFINITIONS

1. Grievance. A grievance is an alleged misapplication of a specific provision of this MOU, or a specific provision of the Employee Handbook, City Ordinance, City Code, or Departmental Policy, rules or regulations covering wages, hours or other terms or conditions of employment, which alleged misapplication adversely affects the employees or the association. The content of Employee Performance Audits are not grievable.
2. Written Grievance. A written grievance is a grievance, as defined above, which has been reduced to writing on a form provided by the City, and which shall include the grievant's name, classification, department, immediate supervisor's name, representative's name, if any; the specific section of the MOU, Employee Handbook, City Ordinance, City Code, or Departmental Policy alleged to have been misapplied, a specific description of the alleged grievance, with the circumstances supporting the grievant's allegation, and the specific remedy requested to resolve the grievance.
3. Grievant. A grievant is an employee, a group of employees or the Association. A grievant may file a grievance, as defined above. Alleged misapplication which affect more than one employee in a substantially similar manner may, by mutual agreement, be consolidated as a group grievance and thereafter represented by a single grievant.

Work day is defined as Monday through Friday exclusive of holidays as provided by the City's holiday schedule.

GRIEVANCE PROCEDURE

1. Unwritten Grievance. The grievant shall orally discuss his/her grievance with his/her immediate management supervisor in an attempt to resolve the grievance. The management supervisor shall give an oral response to the employee within seven (7) work days of the issue being raised by the employee.

2. Written Grievance.

- A. Level 1: If the grievant is not satisfied with the resolution proposed at the unwritten level, he/she may, within twenty (20) calendar days from the event giving rise to a grievance, or from the date the employee should reasonably have been expected to have knowledge of such event, file a formal written grievance with his/her most immediate management supervisor, the Manager, Bureau of Technical Services, shall, within seven (7) work days from the receipt of the grievance, meet the grievant and give a written response to the grievant on the original grievance form.
- B. Level 2. If the grievant is not satisfied with the written response from the Manager, Bureau of Technical Services, the grievant may, within seven (7) work days from the receipt of such response, file a grievance with the appropriate management designee, if applicable. Within seven (7) work days of receipt of the written appeal, the management designee shall investigate the grievance, which shall include meeting with the grievant, and give a written response to the grievant on the original form. If there is no management designee at this level, the grievance shall move to Level 3.
- C. Level 3. If the grievant is not satisfied with the written response from the management designee, the grievant may, with seven (7) work days from the receipt of the response appeal the grievance to the Director of Public Safety. Within seven (7) work days of receipt of the written appeal, the Director of Public Safety or designee shall investigate the grievance, which may include a meeting with the grievant, and give a written response to the grievant on the original grievance form.
- D. Level 4. If the grievant is not satisfied with the written response of the Director of Public Safety, the grievant may, within seven (7) work days from the receipt of this response, file a written appeal to the Director of Human Resources. Within seven (7) days of receipt of the written appeal, the Director of Human Resources (or designee) shall investigate the grievance, which may include a meeting with the grievant, and give a written response to the grievant on the original grievance form.
- E. Level 5. If the grievant is not satisfied with the written response of the Director of Human Resources, the grievant may, within seven (7) work days from the receipt of this response, file a written appeal to the City Manager. Within ten (10) work days of receipt of the written appeal, the City Manager or designee shall investigate the grievance, which shall include a meeting with the grievant, and give a written response to the grievant, which shall be final and binding, except as provided, below, in CONFIRMABLE ARBITRATION.

GENERAL PROVISIONS

1. The time limits set forth herein above are to be strictly followed. Time limits may be waived by mutual agreement.
2. If a grievant fails to carry his/her grievance forward to the next level within the prescribed time period, the grievance shall be considered denied.
3. If the original grievance is modified at any step, it shall be considered a new grievance and must be re-filed, treated as a new grievance and subject to all procedural considerations, unless, modified in writing by mutual consent of the parties.
4. If a supervisor or manager fails to respond with an answer within the given time period, the grievant may appeal to the next higher level.
5. The grievant may be represented by a person of his/her choice at any formal level of this procedure.
6. Formal levels may be waived by mutual consent of the parties.
7. If the grievant is not represented by the Association, the Association shall be notified of a settlement proposed at any written level of the procedure which is acceptable to both the grievant and the City prior to the settlement being finalized. The purpose of this step is to allow the Association to state its position for the record. If the Association does not provide a written response within seven (7) work days after notification, such opportunity shall be considered waived, and the proposed settlement shall be implemented and the matter closed.
8. Although grievances will normally be filed at the first level, the parties recognized that certain grievances, due to their nature, should be more appropriately filed at a higher level. The parties therefore agree that grievances should be filed at the lowest level wherein the incumbent has the authority to resolve such grievance.
9. By mutual agreement of the parties, a grievance may revert to a previous level of the procedure.

CONFIRMABLE ARBITRATION

1. If a grievance has been properly processed through GRIEVANCE PROCEDURE, above, and has not been resolved, then the grievant, through the Association, may appeal the grievance to Confirmable Arbitration.
2. To request confirmable arbitration, the appeal must be filed with the Director of Human Resources or designee within ten (10) work days of receipt of an answer at Level 5, or ten (10) work days from the last day an answer was possible at Level 5 of GRIEVANCE PROCEDURE.
3. The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) names of persons qualified to act as arbitrators.
4. Within ten (10) work days following receipt of the above-referenced list, the parties shall communicate to select the arbitrator. The right to strike the first name shall be determined by lot, and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
5. Within twenty (20) calendar days following receipt of the notice of appeal to confirmable arbitration, a meeting or discussion shall be arranged by the Director of Human Resources or designee with the employee and appropriate Association representative to prepare a joint statement of the issue(s) to be presented to the arbitrator. If the parties are unable to agree upon the issue(s), each party will prepare its statement of the issue(s) to be presented to the arbitrator.
6. The arbitrator shall hold a hearing on the issue(s) jointly submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue(s), and within 30 days of the hearing render a written decision with reasons for the decision.

Post Hearing Briefs

Unless the parties mutually agree, there shall be no post hearing briefs. The parties shall present oral argument immediately upon close of the presentation of evidence. However, in the situation of multiple day hearings broken by days or weeks, or of a complex case, a party may request of the arbitrator the right to submit a post hearing brief.

7. Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration and shall contribute equally to the fees and expenses of the arbitrator and court reporter, if any. However, this paragraph is subject to the provisions of paragraph 10, hereafter.

8. The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
9. The decision of the arbitrator shall be final and conclusive (*i.e.*, “confirmed”) unless the City acts within fifteen calendar days of the date of the award to exercise an option to take the dispute to Superior Court.
10. The City shall exercise its option by sending written notice to the COA within the above-mentioned fifteen day time period. In addition, by doing so it shall incur the financial obligation of paying within sixty days of the written notice from the Association all of its legal fees and costs (including its share of the arbitration costs). In addition, any applicable statutes of limitations for seeking judicial relief are agreed to have been waived by the City, because the Association initially took the matter to Confirmable Arbitration, under this agreement.
11. The COA may then take the dispute to the courts. Once a final judgment is entered, if the Association prevails in whole or in part, the City shall be responsible for the totality of the Association’s attorney’s fees and costs of the prosecution of its case in the judicial forum. These monies shall be paid within sixty days of the judgment.
12. If the City exercises its option as above-described, then the judicial proceedings shall be considered a trial *de novo*, in the same fashion as judicial proceedings are considered when one side or the other rejects court-mandated arbitration.
13. If the arbitration is final and conclusive, as described above, by the City not exercising its option to force the matter to judicial proceedings, then the arbitrator’s award is subject to the California Arbitration Act, by petition of either side, pursuant to C.C.P. Sections 1280, *et seq.*

APPEAL PROCEDURE WAIVER

The Association agrees that the procedures set forth herein is the only grievance procedure available to the employees it represents and that any appeal rights found elsewhere within City Codes, Ordinances, Resolutions, or Policies are waived. The sole exception to this waiver is the Impasse Procedure, which is still applicable as a dispute resolution procedure available during the meet and confer.

Dated: March __, 2004

CITY OF SUNNYVALE

COMMUNICATION OFFICERS
ASSOCIATION

Mark Gregersen
Director of Human Resources

Debbie Patterson
COA President

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CITY OF SUNNYVALE
AND
COMMUNICATION OFFICERS ASSOCIATION
MEMORANDUM OF UNDERSTANDING
July 1, 1999 – December 31, 2004